

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Winstar Odessa, Inc.	)	Facility ID No. 84410
Licensee of Station KWWT(TV)	)	NAL/Acct. No.: 201641420005
Odessa, Texas	)	FRN: 0010908440

**FORFEITURE ORDER**

**Adopted: June 16, 2016****Released: June 16, 2016**

By the Chief, Video Division, Media Bureau

**I. INTRODUCTION**

1. In this *Forfeiture Order*, issued pursuant to Sections 0.61(f)(1) and 1.80(a)(1),(2) of the Commission's rules (Rules),<sup>1</sup> we find that Winstar Odessa, Inc. (Licensee), licensee of Station KWWT(TV), Odessa, Texas (Station): (1) willfully and/or repeatedly violated Section 73.3526(e)(11)(iii) of the Rules<sup>2</sup> by failing to file with the Commission in a timely manner its Children's Television Programming Reports (FCC Form 398) for sixteen quarters; and (2) willfully and/or repeatedly violated Section 73.3514(a) of the Rules<sup>3</sup> by failing to report those late filings in its renewal application. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is liable for a monetary forfeiture in the amount of Twenty Thousand Dollars (\$20,000).

**II. BACKGROUND**

2. The Video Division issued a Notice of Apparent Liability (NAL) for Forfeiture on March 29, 2016.<sup>4</sup> The NAL notified the Licensee that (1) its failure to timely file the Station's Children's Television Programming Reports for sixteen quarters<sup>5</sup> constituted an apparent willful and/or repeated violation of Section 73.3526(e)(11)(iii) of the Rules and (2) its failure to report these violations in its renewal application<sup>6</sup> constituted an apparent willful and/or repeated violation of Section 73.4514(a) of the Rules. The Division concluded that the Licensee was apparently liable for a forfeiture in the amount of \$20,000—\$17,000 for the Licensee's failure to timely file its Children's Television Programming Reports and \$3,000 for its failure to report the aforementioned violations in its renewal application. The Licensee received the NAL but did not file a response.

<sup>1</sup> 47 C.F.R. §§ 0.61(f)(1), 1.80(a)(1),(2).

<sup>2</sup> 47 C.F.R. § 73.3526(e)(11)(iii).

<sup>3</sup> 47 C.F.R. § 73.3514(a).

<sup>4</sup> *Winstar Odessa, Inc.*, Notice of Apparent Liability for Forfeiture, DA 16-326 (Vid. Div. 2016) (NAL).

<sup>5</sup> According to Commission records, the Licensee filed its Children's Television Programming Reports late for sixteen consecutive quarters: the third quarter of 2006 through the second quarter of 2010. Licensee uploaded all of the Reports to its online public file on February 12, 2013. NAL at n. 11.

<sup>6</sup> File No. BRC DT - 20140401AOT.

### III. DISCUSSION

3. The Commission is authorized to license radio and television broadcast stations and is responsible for enforcing the Commission's rules and applicable statutory provisions concerning the operation of those stations. Under section 503(b)(1) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>7</sup> In order to impose a forfeiture penalty, the Commission must issue a notice of apparent liability, the notice must be received, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed.<sup>8</sup> The Commission will then issue a forfeiture order if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>9</sup> As we set forth in greater detail below, we conclude that the Licensee is liable for a forfeiture in the amount of \$20,000 for its repeated and/or willful violations of Sections 73.3526(e)(11)(iii) and 73.4514(a) of the Rules.

4. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the rules establishes a base forfeiture amount of \$3,000 for failure to file a required form or information.<sup>10</sup> In determining the appropriate forfeiture amount, the Commission may adjust the base amount upward or downward by considering the factors in Section 503(b)(2)(E), which include "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require." In the NAL, the Division considered such factors and proposed a total forfeiture amount of \$20,000.<sup>11</sup>

5. The Licensee received the NAL but did not file any response regarding the violations identified in the NAL during the response period. In light of the specific facts and circumstances before us, we find the Licensee's violations warrant the forfeiture proposed in the NAL. Accordingly, we find that the Licensee is liable in the amount of \$20,000 for its willful and/or repeated violations of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Rules.

### IV. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended, and Sections 0.61(f)(1) and 1.80(a)(1) and (2) of the Rules,<sup>12</sup> Winstar Odessa, Inc. SHALL FORFEIT to the United States the sum of Twenty Thousand Dollars (\$20,000) for its willful and/or repeated violation of Sections 73.3526(e)(11)(iii) and 73.3514(a) of the Rules.<sup>13</sup>

7. Payment of the forfeiture SHALL be made in the manner provided for in Section 1.80(h) of the Commission's rules within thirty (30) calendar days after the release date of this *Forfeiture Order*.<sup>14</sup>

<sup>7</sup> 47 U.S.C. § 503(b)(1),(A),(B); 47 C.F.R. § 1.80(a)(1),(2). The Commission may assess a forfeiture order for violations that are merely repeated, and not willful. *See, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362, (2001) (issuing a Notice of Apparent Liability for a cable television operator's repeated violations of the Commission's signal leakage rules). "Repeated" means that the act was committed or omitted more than once. *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>8</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>9</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002).

<sup>10</sup> *See Forfeiture Policy Statement*, 12 FCC Rcd at 17113-15; 47 C.F.R. § 1.80(b), note to para. (b)(8), Section I.

<sup>11</sup> NAL at 4.

<sup>12</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.61(f)(1) & 1.80(a)(1),(2).

<sup>13</sup> 47 C.F.R. §§ 73.3526(e)(11)(iii) and 73.3514(a).

<sup>14</sup> 47 C.F.R. § 1.80(h).

If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Communications Act of 1934, as amended.<sup>15</sup>

8. Payments of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the FRN referenced above. An FCC Form 159 (Remittance Advice) must be submitted with payment unless payment is made online at the Commission's Fee Filer website.<sup>16</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:<sup>17</sup>

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

9. Requests for full payment of the forfeiture proposed in this *Forfeiture Order* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>18</sup>

10. IT IS FURTHER ORDERED THAT a copy of this *Forfeiture Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Winstar Odessa, Inc., PO Box 547, Arroyo Grande, CA 93421 and to its counsel George R. Borsari, Jr., Borsari & Paxson, 5335 Wisconsin Avenue, N.W., Suite 440, Washington, DC 20015.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>15</sup> 47 U.S.C. § 504(a).

<sup>16</sup> Payment may be made online at the Commission's Fee Filer website: <https://www.fcc.gov/encyclopedia/fee-filer>. Online payments do not require Licensees to submit FCC Form 159. Alternatively, payment may be made using FCC Form 159; detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>17</sup> For questions regarding payment procedures, contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 or e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>18</sup> See 47 C.F.R. § 1.1914.